

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DONNY LEE COX,**

**Appellant,**

**v.**

**STATE OF MISSOURI,**

**Respondent.**

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DOCKET NUMBER WD76549

**Date: October 14, 2014**

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Appeal from:  
Buchanan County Circuit Court  
The Honorable Daniel F. Kellogg, Judge

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Appellate Judges:  
Division Two: Victor C. Howard, P.J., Alok Ahuja and Gary D. Witt, JJ.

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Attorneys:  
Damien S. B. DeLoyola, Kansas City, MO, for appellant.  
Shaun J. Mackelprang, Jefferson City, MO, for respondent.

# MISSOURI APPELLATE COURT OPINION SUMMARY

## COURT OF APPEALS -- WESTERN DISTRICT

**DONNY LEE COX**

**Appellant,**

**v.**

**STATE OF MISSOURI,**

**Respondent.**

WD76549

Buchanan County

Before Division Two Judges: Victor C. Howard, P.J., Alok Ahuja and Gary D. Witt, JJ.

Donny Cox pled guilty to statutory sodomy in the first degree and sexual exploitation of a minor. He filed a *pro se* motion for post-conviction relief under Supreme Court Rule 24.035 in the Circuit Court of Buchanan County. His appointed counsel later filed an amended motion, alleging that the representation provided to Cox by his plea counsel was deficient in three specific respects.

The amended motion for post-conviction relief was apparently filed by appointed counsel more than four months after the deadline specified in Rule 24.035(g). Despite the apparent untimeliness of the amended motion, the circuit court denied Cox's amended motion on the merits following an evidentiary hearing. Cox appeals. He argues that, because his amended post-conviction relief motion was untimely under Rule 24.035(g), the circuit court therefore erred in addressing the merits of his claims. Cox asks us to vacate the motion court's judgment.

**AFFIRMED.**

**Division Two holds:**

To be successful on appeal, a party must do more than simply assert that the trial court committed error. Under Rule 84.13, an assertion of error without a showing of how that error prejudiced the appellant does not warrant reversal.

In this case, Cox does not argue that the trial court ruling on the merits of the claims asserted in his amended motion was erroneous, or that the trial court should have instead granted him relief on the claims asserted in his *pro se* motion. Instead, Cox argues only that the trial court should not have addressed the merits of his claims at all. He asserts that the motion court's judgment should be vacated so that he can return to the circuit court, argue that he was

abandoned by appointed counsel's untimely filing of the amended motion, and file a new amended motion for post-conviction relief with the assistance of new appointed counsel.

Contrary to Cox's claims, he would not be entitled to the appointment of new counsel, or to file a new amended motion, even if he established abandonment. Instead, an abandonment claim would only entitle Cox to a merits ruling on the claims asserted in his existing amended motion. But the motion court has already given merits consideration to the claims in Cox's amended motion. In these circumstances, vacating the existing judgment would accomplish nothing, and would leave Cox exactly where he is in now. Because Cox has failed to show that reversal would afford him any meaningful relief, the circuit court's judgment is affirmed.

**Opinion by: Alok Ahuja, Judge**

October 14, 2014

<b>THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.</b>
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